

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,

Plaintiff, Defendant-in-Counterclaim,

v.

J.P. MORGAN CHASE BANK, as Trustee for the  
Registered Holders of Credit Suisse First Boston  
Mortgage Securities Corp., Commercial Mortgage  
Pass-Through Certificates, Series 1999-C1., and  
CSFB 1999-C1 ROYALL STREET, LLC,

Defendants, Plaintiffs-in-Counterclaim,

v.

WILLIAM LANGELIER and GERALD  
FINEBERG,

Defendants-in-Counterclaim.

Civil Action No. 05-CV-10506 (WGY)

**MOTION OF DEFENDANTS AND PLAINTIFFS-IN-COUNTERCLAIM  
TO EXCLUDE TESTIMONY OF ANDREW COHN**

Defendants and Plaintiffs-in-Counterclaim J.P. Morgan Chase Bank, as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1, and CSFB 1999-C1 ROYALL STREET, LLC (collectively, “the Lender”) move to exclude the testimony of Andrew Cohn (attorney for William Langelier), whose name first appeared on the fact witness list of Blue Hills Office Park LLC, Gerald Fineberg, and William Langelier (collectively, the “Blue Hills Parties”) today (less than 48 hours prior to the start of trial).

The Blue Hills Parties did not list Mr. Cohn as one of their potential witnesses in their August 31, 2005 initial disclosures, in any supplemental disclosures, or in the July 18, 2006 joint pre-trial memorandum. Nor did the Blue Hills Parties submit any affidavit testimony of Mr. Cohn or make any reference to Mr. Cohn's actions in their May 17, May 31, or June 10, 2006 summary judgment filings. The first and only notice given to the defendants/plaintiffs-in-counterclaim (referred to collectively as the "Lender") that the Blue Hills Parties would call Mr. Cohn as a fact witness was given today, September 11, 2006.

Given that the Blue Hills Parties never mentioned the possibility that Mr. Cohn would testify until today, the Lender was never on notice of the need to depose Mr. Cohn and would be unfairly surprised and prejudiced if Mr. Cohn were permitted to testify. The Lender is now engaged in full scale preparation for trial and has no time to depose Mr. Cohn prior to trial.

Furthermore, the Blue Hills Parties have given no indication as to the subject matter of Mr. Cohn's testimony. To the extent such testimony will touch on the topic of any legal advice given to Mr. Langelier by Mr. Cohn, it must be excluded for the additional reason that Mr. Langelier was repeatedly instructed by his counsel not to answer questions at his deposition concerning Mr. Cohn's advice. Finally, any legal analysis, understanding, or opinion of Mr. Cohn must be excluded because the Blue Hills Parties failed to disclose any such expert opinion as required by Fed. R. Civ. P. 26(a)(2).

For all of these reasons, Mr. Cohn's testimony should be excluded. See Fed. R. Civ. P. 26(a)(3)(A); L.R. 43.1(B)(3).

Respectfully submitted,

J.P. MORGAN CHASE BANK, as Trustee for the  
Registered Holders of Credit Suisse First Boston  
Mortgage Securities Corp., and  
CSFB 1999-C1 ROYALL STREET, LLC

By their attorneys,

/s/ Bruce E. Falby

E. Randolph Tucker (BBO #503845)

Bruce E. Falby (BBO #544143)

Bruce S. Barnett (BBO #647666)

Traci S. Feit (BBO #660688)

DLA PIPER US LLP

33 Arch Street, 26th Floor

Boston, MA 02110-1447

(617) 406-6000 (*telephone*)

(617) 406-6100 (*fax*)

Dated: September 11, 2006

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

The undersigned counsel for CSFB and the Trustee certifies that he has conferred with Meredith Swisher, counsel for defendants-in-counterclaim Blue Hills Office Park LLC, William Langelier, and Gerald Fineberg, in a good faith attempt to resolve or narrow the issues presented by this motion.

/s/ Bruce S. Barnett

Bruce S. Barnett